

CHAPTER 210

PUBLIC UTILITIES

SENATE BILL 19-078

BY SENATOR(S) Donovan and Bridges, Court, Danielson, Fenberg, Foote, Gonzales, Lee, Moreno, Pettersen, Rodriguez, Story, Todd, Winter, Zenzinger, Garcia;
also REPRESENTATIVE(S) Hansen and Herod, Arndt, Bird, Buckner, Buentello, Caraveo, Cutter, Duran, Esgar, Exum, Gray, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Kraft-Tharp, McCluskie, Melton, Michaelson Jenet, Mullica, Roberts, Singer, Sirota, Snyder, Sullivan, Titone, Valdez A., Valdez D., Weissman.

AN ACT

CONCERNING THE PROTECTION OF THE OPEN INTERNET, AND, IN CONNECTION THEREWITH, DISQUALIFYING AN INTERNET SERVICE PROVIDER FROM RECEIVING HIGH COST SUPPORT MECHANISM MONEY OR OTHER MONEY RECEIVED TO FINANCE BROADBAND DEPLOYMENT IF THE INTERNET SERVICE PROVIDER ENGAGES IN CERTAIN PRACTICES THAT INTERFERE WITH THE OPEN INTERNET, REQUIRING AN INTERNET SERVICE PROVIDER THAT ENGAGES IN SUCH PRACTICES TO REFUND ANY SUCH MONEY RECEIVED, AND REQUIRING A GOVERNMENTAL BODY CONTRACTING FOR BROADBAND INTERNET ACCESS SERVICE TO GIVE PREFERENCE TO AN INTERNET SERVICE PROVIDER THAT CERTIFIES THAT IT WILL NOT ENGAGE IN PRACTICES THAT INTERFERE WITH THE OPEN INTERNET.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 40-15-209 as follows:

40-15-209. Net neutrality conditions for internet service providers to receive high cost support mechanism money - definitions. (1) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, AN INTERNET SERVICE PROVIDER THAT IS OTHERWISE ELIGIBLE TO RECEIVE MONEY THROUGH A GRANT FROM THE BROADBAND DEPLOYMENT BOARD PURSUANT TO SECTION 40-15-509.5 OR THROUGH ANY STATE FUND ESTABLISHED TO HELP FINANCE BROADBAND DEPLOYMENT IS NOT ELIGIBLE TO RECEIVE THAT MONEY IF THE INTERNET SERVICE PROVIDER:

(a) **BLOCKS ANY LAWFUL INTERNET CONTENT, APPLICATIONS, SERVICES, OR DEVICES UNLESS THE BLOCKING IS CONDUCTED IN A MANNER CONSISTENT WITH REASONABLE NETWORK MANAGEMENT PRACTICES;**

(b) **ENGAGES IN PAID PRIORITIZATION OF INTERNET CONTENT;**

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(c) REGULATES NETWORK TRAFFIC BY THROTTLING BANDWIDTH OR OTHERWISE IMPAIRS OR DEGRADES LAWFUL INTERNET TRAFFIC ON THE BASIS OF INTERNET CONTENT, APPLICATION, SERVICE, OR USE OF A NONHARMFUL DEVICE UNLESS THE IMPAIRMENT OR DEGRADATION RESULTS SOLELY FROM THE EVENHANDED APPLICATION OF REASONABLE NETWORK MANAGEMENT PRACTICES; OR

(d) FAILS OR REFUSES TO DISCLOSE, SUBJECT TO REASONABLE CONDITIONS TO PROTECT PROPRIETARY INFORMATION, ITS NETWORK MANAGEMENT PRACTICES.

(2)(a) IF THE COMMISSION LEARNS FROM THE BROADBAND DEPLOYMENT BOARD THAT A FEDERAL AGENCY HAS ISSUED A FINAL ORDER OR ENTERED INTO A SETTLEMENT OR CONSENT DECREE REGARDING, OR A COURT OF COMPETENT JURISDICTION HAS ISSUED A FINAL JUDGMENT AGAINST, AN INTERNET SERVICE PROVIDER AND THAT THE BOARD HAS DETERMINED FROM THE ORDER, DECREE, OR JUDGMENT THAT THE INTERNET SERVICE PROVIDER HAS ENGAGED IN CONDUCT SPECIFIED IN SUBSECTION (1) OF THIS SECTION, THE COMMISSION SHALL ISSUE A WRITTEN ORDER TO THE INTERNET SERVICE PROVIDER REQUIRING THE INTERNET SERVICE PROVIDER TO FULLY REFUND ANY MONEY THAT THE INTERNET SERVICE PROVIDER RECEIVED IN THE TWENTY-FOUR MONTHS PRECEDING THE BOARD'S DETERMINATION FROM THE HIGH COST SUPPORT MECHANISM PURSUANT TO A GRANT AWARDED BY THE BROADBAND DEPLOYMENT BOARD UNDER SECTION 40-15-509.5.

(b) AN ORDER ISSUED BY THE COMMISSION PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION MUST INCLUDE AN ITEMIZED STATEMENT OF THE AMOUNT OF MONEY THAT THE INTERNET SERVICE PROVIDER IS REQUIRED TO REFUND AND INSTRUCTIONS ON HOW TO REFUND THE MONEY.

(c) THE THIRD-PARTY CONTRACTOR THAT MAINTAINS THE HIGH COST SUPPORT MECHANISM SHALL ALLOCATE ANY MONEY REFUNDED TO THE HIGH COST SUPPORT MECHANISM PURSUANT TO THIS SUBSECTION (2) TO THE HIGH COST SUPPORT MECHANISM ACCOUNT DEDICATED TO BROADBAND DEPLOYMENT, WHICH ACCOUNT IS DESCRIBED IN SECTION 40-15-509.5 (3).

(d) A REQUIREMENT THAT AN INTERNET SERVICE PROVIDER REFUND MONEY TO THE HIGH COST SUPPORT MECHANISM PURSUANT TO THIS SECTION DOES NOT RELIEVE THE INTERNET SERVICE PROVIDER OF ANY PROVIDER-OF-LAST-RESORT OBLIGATIONS THAT THE INTERNET SERVICE PROVIDER OTHERWISE HAS PURSUANT TO THIS ARTICLE 15.

(3) AN INTERNET SERVICE PROVIDER IS EXEMPT FROM THE OBLIGATIONS SET FORTH IN SUBSECTIONS (1) AND (2) OF THIS SECTION IF THE INTERNET SERVICE PROVIDER ENGAGES IN ANY OF THE PRACTICES LISTED IN SUBSECTIONS (1)(a) TO (1)(d) OF THIS SECTION IN THE COURSE OF:

(a) PROVIDING, FACILITATING THE PROVISION OF, OR ADDRESSING EMERGENCY COMMUNICATIONS, AS PERMITTED OR REQUIRED BY LAW OR AT THE REQUEST OR DIRECTION OF AUTHORITIES SERVING IN LAW ENFORCEMENT, PUBLIC SAFETY, OR NATIONAL SECURITY; OR

(b) ADDRESSING COPYRIGHT INFRINGEMENT OR OTHER UNLAWFUL ACTIVITY.

(4) AS USED IN THIS SECTION:

(a)(I) "BROADBAND INTERNET ACCESS SERVICE" MEANS A MASS-MARKET RETAIL SERVICE THAT PROVIDES THE CAPABILITY TO TRANSMIT AND RECEIVE DATA FROM ALL OR SUBSTANTIALLY ALL INTERNET ENDPOINTS, INCLUDING ANY CAPABILITIES THAT ARE INCIDENTAL TO AND ENABLE THE OPERATION OF THE SERVICE, BUT EXCLUDING DIAL-UP INTERNET ACCESS SERVICE.

(II) "BROADBAND INTERNET ACCESS SERVICE" INCLUDES SERVICES PROVIDED OVER ANY TECHNOLOGY PLATFORM, INCLUDING WIRE, TERRESTRIAL WIRELESS, AND SATELLITE.

(b) "INTERNET SERVICE PROVIDER" MEANS A PROVIDER OF BROADBAND INTERNET ACCESS SERVICE IN COLORADO.

(c) "PAID PRIORITIZATION" MEANS THE MANAGEMENT OF AN INTERNET SERVICE PROVIDER'S NETWORK TO DIRECTLY OR INDIRECTLY FAVOR SOME TRAFFIC OVER OTHER TRAFFIC, INCLUDING THROUGH THE USE OF TECHNIQUES SUCH AS TRAFFIC SHAPING, PRIORITIZATION, RESOURCE RESERVATION, OR OTHER FORMS OF PREFERENTIAL TRAFFIC MANAGEMENT, EITHER:

(I) IN EXCHANGE FOR CONSIDERATION, MONETARY OR OTHERWISE, FROM A THIRD PARTY;

(II) TO BENEFIT AN AFFILIATED ENTITY; OR

(III) TO DISADVANTAGE A COMPETING ENTITY OR ITS AFFILIATES.

(d) "REASONABLE NETWORK MANAGEMENT" MEANS A NETWORK MANAGEMENT PRACTICE THAT IS APPROPRIATE AND TAILORED TO ACHIEVING A LEGITIMATE NETWORK MANAGEMENT PURPOSE, TAKING INTO ACCOUNT THE PARTICULAR NETWORK ARCHITECTURE AND TECHNOLOGY OF THE BROADBAND INTERNET ACCESS SERVICE.

(e) "THROTTLING" MEANS THE INTENTIONAL SLOWING OF BROADBAND INTERNET ACCESS SERVICE.

SECTION 2. In Colorado Revised Statutes, 40-15-509.5, **add** (8.3) as follows:

40-15-509.5. Broadband service - report - broadband deployment board - broadband administrative fund - creation - repeal. (8.3) (a) THE BOARD SHALL PERIODICALLY REVIEW THE WEBSITES OF THE FEDERAL TRADE COMMISSION AND THE FCC TO DETERMINE WHETHER EITHER OF THOSE FEDERAL AGENCIES HAS ISSUED A FINAL ORDER OR ENTERED INTO A SETTLEMENT OR CONSENT DECREE REGARDING ANY:

(I) APPLICANT SEEKING BROADBAND DEPLOYMENT GRANT MONEY FROM THE BOARD; OR

(II) INTERNET SERVICE PROVIDER, AS DEFINED IN SECTION 40-15-209 (4)(b), TO WHICH THE BOARD HAS AWARDED BROADBAND DEPLOYMENT GRANT MONEY.

(b) THE BOARD SHALL REVIEW ANY ORDER OR DECREE DESCRIBED IN SUBSECTION (8.3)(a) OF THIS SECTION TO DETERMINE WHETHER THE INTERNET SERVICE PROVIDER THAT IS THE SUBJECT OF THE ORDER OR DECREE HAS ENGAGED IN CONDUCT PROHIBITED BY SECTION 40-15-209 (1)(a) TO (1)(d). THE BOARD SHALL DENY THE APPLICATION OF ANY APPLICANT SUBJECT TO SUCH A FEDERAL ORDER OR DECREE AND SHALL INFORM THE COMMISSION PURSUANT TO SECTION 40-15-209 (2)(a) ABOUT ANY INTERNET SERVICE PROVIDER AWARDED BROADBAND DEPLOYMENT GRANT MONEY THAT IS SUBJECT TO SUCH AN ORDER OR DECREE.

SECTION 3. In Colorado Revised Statutes, **add** article 26 to title 6 as follows:

ARTICLE 26
Internet Service Providers

6-26-101. Complaints to federal trade commission - attorney general to provide guidance. (1) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE, IN COLLABORATION WITH THE BROADBAND DEPLOYMENT BOARD CREATED IN SECTION 40-15-509.5 (5), SHALL DEVELOP WRITTEN GUIDANCE FOR CONSUMERS SEEKING TO FILE A COMPLAINT WITH THE FEDERAL TRADE COMMISSION TO ALLEGE THAT AN INTERNET SERVICE PROVIDER, AS DEFINED IN SECTION 40-15-209 (4)(b), HAS ENGAGED IN ANY PRACTICE THAT VIOLATES FEDERAL LAW REGARDING INTERFERENCE WITH THE OPEN INTERNET.

(2) ON OR BEFORE OCTOBER 1, 2019, THE DEPARTMENT OF LAW SHALL POST THE WRITTEN GUIDANCE DEVELOPED PURSUANT TO SUBSECTION (1) OF THIS SECTION ON ITS PUBLIC WEBSITE.

(3) THE ATTORNEY GENERAL, IN COLLABORATION WITH THE BROADBAND DEPLOYMENT BOARD, SHALL UPDATE THE WRITTEN GUIDANCE AS NEEDED.

SECTION 4. In Colorado Revised Statutes, **add** 24-103-911 as follows:

24-103-911. Preference for internet service providers that certify compliance with open internet protections - definitions. (1) WHEN CONTRACTING FOR BROADBAND INTERNET ACCESS SERVICE, A GOVERNMENTAL BODY SHALL GIVE PREFERENCE TO AN INTERNET SERVICE PROVIDER THAT CERTIFIES TO THE GOVERNMENTAL BODY THAT, EXCEPT AS ALLOWED UNDER SECTION 40-15-209 (3), THE INTERNET SERVICE PROVIDER WILL NOT ENGAGE IN ANY OF THE PRACTICES SET FORTH IN SECTION 40-15-209 (1).

(2) AS USED IN THIS SECTION:

(a) "BROADBAND INTERNET ACCESS SERVICE" HAS THE MEANING SET FORTH IN SECTION 40-15-209 (4)(a).

(b) "INTERNET SERVICE PROVIDER" HAS THE MEANING SET FORTH IN SECTION 40-15-209 (4)(b).

SECTION 5. Applicability. This act applies to conduct occurring on or after the effective date of this act.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 17, 2019